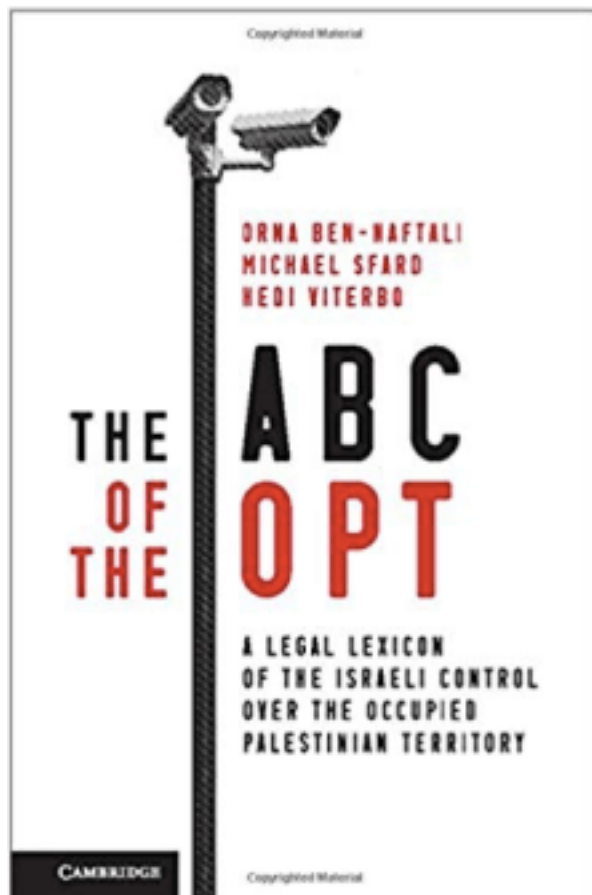


# “Say My Name”: The Politics of Not Naming

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At

first sight, the “ABC of the OPT” creates the impression that this is yet another book written exclusively by Israeli academics about a situation that has profoundly transformed the framework of occupation law—and international humanitarian law in general—a long time ago.

This first impression is underpinned by the use of hegemonically loaded terminology, structure, and choice of entries and sources.

Despite the many nuances academics employ to draw a picture of Israel’s “complicated” rule over the Palestinian people, this review takes issue with the hesitance displayed when looking for a much needed epistemological shift and concepts in understanding how law creates injustice in Israel\_Palestine. Perhaps the lack of this shift is due to the authors’ usage of the lexicon format, which at times demands fitting a proverbial square into a circle. Consequently, the table of entries oscillates between headings that adopt the sanitized legal technicalities of the Israeli occupation authorities (“assigned residency”, “security prisoners”) and others with more vague meaning such as “kinship”, “quality of life”, or “lawfare”.

At closer reading, one *does* find in this volume straight-forward analyses of Israeli policies in Palestine. Thus, it is not yet another book written in the style of the occupiers reflecting their own history and practice. It is, for example, invigorating to read about the impact of Israeli pre-1967 policies that are crucial to uphold the ongoing colonisation of Palestine (p. 305, under entry “O- Outside/Inside”). This proves a historically conscious approach to understanding the situation beyond a hegemonic, linear narration. By also shedding light on colonial practices of the British Mandate era and its parallels and continuities, the book breaks with certain time markers that have for far too long dominated and obfuscated the thinking and writing about Palestine/Israel. This goes as well for the chapter exploring the concept of settler-colonialism (p. 202 under entry “J-Jewish Settlements”). It would have been interesting to read how this approach could be mirrored in legal terms. [Reynolds and Xavier](#), for instance, consider the “very structure of settler-colonialism in a context of occupation” criminalised under Article 8(2)(b)(viii) of the Rome Statute.

Yet reading the book might leave you puzzled, because the most urgent task remains unaddressed: to provide an adequate legal framework that moves beyond international humanitarian law – and perhaps one that focuses on ending the occupation.

### **The Need for Epistemological Shifts or: A for Apartheid**

The lexicon is certainly an unconventional way of addressing legal knowledge. But let’s recall that lexica are used to canonize knowledge that is deemed worthy, preserving it for the *future*. This raises the question why this format has been chosen to address a legal framework which no longer serves the situation on the ground. In fact, the idea that a prolonged, indefinite occupation that seeks to permanently change the social, political, and demographic reality of a foreign territory is illegal has been [argued](#) by one of the authors elsewhere in the case of the occupied Palestinian territory as well.

But while the “ABC of the OPT” can be lauded for providing detailed evidence of the illegality of Israel’s prolonged foreign military occupation of Palestine, its designed arbitrariness, and its unsustainability, the reader may wonder why the authors hesitate to address a more forward-thinking framework. Credit must be given for delivering an introduction to the mental lexicon of Israeli military thought and practice, picked up by Israeli law-makers, the judiciary and in part endorsed by Israeli legal scholarship (also known as the military-legal complex). The authors successfully reflect how the law can be stretched to its utmost breaking point, becoming the second skin of the occupation and steadily worsening the situation of the occupied, rendering them stateless, landless, homeless. Yet an urgently needed epistemological shift to assess the situation on the ground adequately is absent.

The very first entry of the book serves as an example of how the lexicon largely remains within Israeli military-judicial thinking, with the editors employing the first letter A for “assigned residency”. Military-legal thought and practice are in themselves a worthwhile endeavour that deserve to be studied. But in epistemological terms, I wonder why the suggested approach is incapable of

integrating “apartheid” or “annexation” as legal terms and as epistemological concepts of systematized characterization of what is going on in Palestine.

Apartheid is defined in article II of the [International Convention on the Suppression and Punishment of the Crime of Apartheid](#) (1973):

*The term “the crime of apartheid”, which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to... inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.*

Although the term apartheid was originally associated with the case of South Africa, it now represents a species of crime against humanity under customary international law and Art 7 (1) (j) of the [Rome Statute of the International Criminal Court](#) (ICC), according to which:

*“The crime of apartheid” means inhumane acts... committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.*

Legal debates about the application of the legal concept of apartheid to the situation in Palestine-Israel are ongoing. Such an analysis has been suggested and extensively researched in the past. Numerous reports like those of the [UN Human Rights Council](#), the [UN Committee for the Elimination of Racial Discrimination](#), the [UN Economic and Social Commission for Western Asia](#), the [Human Sciences Research Council of South Africa](#), including studies of [international legal](#), [political](#), [comparative](#), [biographical](#), and [ethnographic](#) aspects of apartheid in Palestine-Israel have been published and have found their way into scholarly discourses. [News reports](#), [commentators](#), [NGO reports](#) highlighting apartheid policies with regard to [access to water](#), [freedom of movement](#), [citizenship](#), reflect the need for a shift towards grasping the discriminatory and oppressive shape the Israeli domination of Palestine has assumed.

The idea that the occupation framework is obsolete is [not new](#). Yet the lexicon merely mentions apartheid as a legal concept when it comes to the arguments of Palestinian petitioners before the High Court of Justice (Supreme Court of Israel). For example, the *Abu Safiyeh v. Minister of Defense* case in 2009 discusses questions of expropriation and annexation of Palestinian land for Jews only. But apartheid as a legal term is not mentioned. More precisely, the entry “Proportionality” refers to President of the High Court of Justice Beinisch’s concurring opinion, which rejects the comparison of Israel’s practices with apartheid because, according to the judge, there is a “*great distance between the security measures practiced by the state of Israel for the purpose of protection against terrorist attacks and the reprehensible practices of Apartheid policy.*” (p. 161).

The entry then concludes by saying that such rendering does “*ignore and deny the reality*”, asserting that the “[court’s] discourse, however, is extracted from the broader

*context of opposition to occupation, annexation, and systematic discrimination”( p. 161).*

But it seems that the entry does not confront the judge’s unwillingness to discuss apartheid as a legal concept. Thereby, the entry denies this legal debate as something worth mentioning and examining. The reader is left behind with the impression that the authors hide behind the smokescreen of Israeli legal language.

### **Why would calling out apartheid be important, though?**

Only when there is a word for a certain relation or a type of injustice we can start to effectively incorporate it into our legal analysis. Think of the history of terms such as [sexual harassment](#), intersectionality (on naming “power and privilege”, and rendering visible the centuries old oppression that links gender, race and class) (Vivian M. May, “Intersectionality”, Rethinking Women’s and Gender Studies, Chapter: Intersectionality, Publisher: Routledge (2012), Editors: Catherine Orr, Ann Braithwaite, Diane Lichtenstein, pp.155-172, p. 156), [genocide](#) (“[destruction of the national pattern of the oppressed group and the imposition of the national pattern of the oppressor](#)”), or [apartheid](#) (legalized racial supremacy). In each instance in which the “name” came into being, “[the act of recognition was a momentous one](#)”.

What we learn from the history of any of these legal concepts mentioned above is that it wasn’t enough to paraphrase what is wrong; humanity needed a name for it, not least because it instigates thinking about law’s inner workings. That the authors often (not always) stopped short of doing so in the book under review here ([whereas they do so elsewhere](#)) is even more surprising, since there was no need to create new names terms already used by Palestinian and international scholarship could have been employed. Thus, the main concern here is the use of hegemonically military-loaded terminology, structure, and choice of entries and sources, which conform to an obsolete legal discourse that is structurally unable to remedy the very regime this hegemony sustains and reproduces.

This epistemological gap also has implications for the political discourse in Europe, where paraphrasing apartheid, without naming it, is becoming increasingly commonplace: since February 2017, EU High Representative Federica Mogherini has repeatedly raised concern over “[entrench\[ing\] a one-state reality, with unequal rights for the two peoples, perpetual occupation and conflict.](#)” Similar language has been recently adopted by other European countries such as [France](#) and [Germany](#), while European diplomats in the West Bank now refer to “[systemic legal discrimination](#)”.

Granted, the notion is loaded because of its rightfully horrifying associations with apartheid South Africa. Independent from that historical situation, however, it is a legal term of art that is being discussed as part of the [preliminary proceedings](#) brought by Palestine before the ICC in The Hague. But alas, the book does not engage in this grand debate currently happening in The Hague.

By not addressing the apartheid question, the authors are silencing not only Palestinian legal resistance to Israeli control over them but also growing academic

scholarship about apartheid in Israel\_Palestine, its potential, and its limits. This approach is at odds with the promise the book offers at the outset, when Walter Benjamin's "tradition of the oppressed" is invoked in order to challenge dominant legal frameworks. It might come across as counter-intuitive given the highly asymmetrical situation on the ground, but it is Palestinians resisting Israeli policies shape the law, too. Palestinians have pushed for [statehood recognition](#) and membership of international legal and judicial bodies such as the [ICC](#), have ratified and used numerous [international legal treaties](#), and have a long-standing tradition in [advocating for their rights in legal terms](#).

This again shows what goes missing when a narrative is used that simultaneously identifies a structural injustice and refrains from articulating an operational discourse towards its resolution. "*And that has made all the difference.*" (p. 161).

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